

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-6292
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009-64

12 **CLARK JAMES McCALL**
13 3942 Yellow Wood Road
14 Oroville, CA 95965

A C C U S A T I O N

15 Registered Nurse License No. 539301

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 ("Board"), Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about December 18, 1997, the Board issued Registered Nurse
24 License No. 539301 to Clark James McCall ("Respondent"). The registered nurse license will
25 expire on March 31, 2009, unless renewed.

26 ///

27 ///

28 ///

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2725 states, in pertinent part:

(b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) "Standardized procedures," as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

1 (d) Nothing in this section shall be construed to require approval of
2 standardized procedures by the Division of Licensing of the Medical Board of
California, or by the Board of Registered Nursing.

3 (e) No state agency other than the board may define or interpret the
4 practice of nursing for those licensed pursuant to the provisions of this chapter, or
develop standardized procedures or protocols pursuant to this chapter, unless so
5 authorized by this chapter, or specifically required under state or federal statute.
"State agency" includes every state office, officer, department, division, bureau,
6 board, authority, and commission.

7 5. Code section 2764 provides, in pertinent part, that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
9 against the licensee or to render a decision imposing discipline on the license. Under Code
10 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
11 years after the expiration.

12 6. Code section 2761 states, in pertinent part:

13 The board may take disciplinary action against a certified or licensed nurse
14 or deny an application for a certificate or license for any of the following:

15 (a) Unprofessional conduct. . . .

16 **COST RECOVERY**

17 7. Code section 125.3 provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 **BACKGROUND**

22 8. At all times herein mentioned, Respondent was employed as a registered
23 nurse by the State of California, Department of Developmental Services, Sierra Vista Facility
24 ("Sierra Vista") in Yuba City, California.

25 ///

26 ///

27 ///

28 ///

1 9. Respondent had attended training sessions setting forth Sierra Vista's
2 policies and procedures. The training sessions included Sierra Vista's written policy requiring
3 staff to evade, escape, and get help as a first response to a hostile situation, and Sierra Vista's
4 affirmation of a patient's right to rehabilitation and protection from violence and abuse.

5 10. Respondent was the primary contact person for Patient A, a disabled adult.
6 Respondent knew or should have known that Patient A had a documented inability to
7 appropriately respond to confrontation. On or about September 1, 2007, in the dining room of
8 Sierra Vista, both a staff member and Patient A advised Respondent that Patient A was angry at
9 him. Rather than evading Patient A, pursuant to Sierra Vista's policies and procedures,
10 Respondent confronted Patient A. Respondent then punched Patient A in the face, twisted his
11 arm behind his back, and forced him to the ground, in violation of Sierra Vista's policies and
12 procedures.

13 11. In a written statement dated September 1, 2007 and during an interview on
14 September 7, 2007 by a Department of Development Services Investigator, relating to an
15 investigation of the facts involving the incident described in paragraph 10, Respondent made
16 false and misleading statements by: (1) denying that he punched Patient A in the face, (2) stated
17 that he had no prior warning that Patient A was angry and was requested to leave the dining room
18 area, and (3) denied grabbing Patient A's right arm, twisted it behind his back, and brought him
19 to the ground during a one-man containment.

20 **CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 12. Respondent's registered nurse license is subject to disciplinary action
23 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, in that on or
24 about September 1, 2007, while on duty as a registered nurse at Sierra Vista, Respondent
25 committed an act constituting unprofessional conduct, as set forth in paragraph 10, above.

26 13. Respondent's registered nurse license is subject to disciplinary action
27 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, in that
28 Respondent committed an act constituting unprofessional conduct, as set forth in paragraph 11,

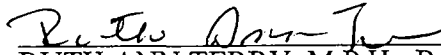
1 above.

2 **PRAYER**

3 **WHEREFORE**, Complainant requests that a hearing be held on the matters
4 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 5 1. Revoking or suspending Registered Nurse License No. 539301, issued to
6 Clark James McCall;
- 7 2. Ordering Clark James McCall, to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: 9/30/08

12
13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

16 03579110-SA2008100483
17 30549302.wpd
18 baf [6/18/08]